

**Executive Summary – Enforcement Matter – Case No. 41710**

**City of Kerrville**

**RN101425296**

**Docket No. 2011-0825-PWS-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PWS

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

1000 Thompson Drive, Kerrville, Kerr County

**Type of Operation:**

Public water supply

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** September 23, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$695

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$695

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average by Default

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41710**

**City of Kerrville**

**RN101425296**

**Docket No. 2011-0825-PWS-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** February 24, 2011

**Date(s) of NOE(s):** February 24, 2011

***Violation Information***

Alleged to have exceeded the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") based on the running annual average [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 365 days, return to compliance with the running annual average MCL for TTHM; and
- b. Within 380 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Todd Parton, City Manager, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028

The Honorable David Wampler, Mayor, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	23-May-2011	<b>Screening</b>	24-May-2011	<b>EPA Due</b>	30-Apr-2011
	<b>PCW</b>	20-Jun-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Kerrville		
<b>Reg. Ent. Ref. No.</b>	RN101425296		
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41710	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0825-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katy Schumann
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$500

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **14.0%** Enhancement **Subtotals 2, 3, & 7** \$70

Notes: Enhancement for two NOV's with same/similar violations and two NOV's with dissimilar violations.

**Culpability** **Yes** **25.0%** Enhancement **Subtotal 4** \$125

Notes: The Respondent received an Alert Letter for total trihalomethanes ("TTHM") exceedances, dated August 10, 2010.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$480  
Approx. Cost of Compliance \$5,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$695

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$695

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$695

**DEFERRAL** **0.0%** Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral due to culpability.

**PAYABLE PENALTY** \$695

Screening Date 24-May-2011

Docket No. 2011-0825-PWS-E

PCW

Respondent City of Kerrville

Policy Revision 2 (September 2002)

Case ID No. 41710

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101425296

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	2	10%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 14%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two NOVs with same/similar violations and two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 14%

Screening Date 24-May-2011  
Respondent City of Kerrville  
Case ID No. 41710

Docket No. 2011-0825-PWS-E

PCW

Policy Revision 2 (September 2002)  
PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101425296  
Media [Statute] Public Water Supply  
Enf. Coordinator Katy Schumann  
Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for TTHM based on the running annual average. Specifically, at the time of the record review, it was documented that the running annual average concentration for TTHM was 0.087 mg/L for the third quarter of 2010, and 0.089 mg/L for the fourth quarter of 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Customers of the Facility have been exposed to significant amounts of pollutants which did not exceed levels protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 1

183 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$500

One annual event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$480

Violation Final Penalty Total \$695

This violation Final Assessed Penalty (adjusted for limits) \$695

# Economic Benefit Worksheet

Respondent City of Kerrville  
 Case ID No. 41710  
 Ent. Reference No. RN101425296  
 Media Public Water Supply  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	1-Jul-2010	1-Jun-2012	1.92	\$480	n/a	\$480

Notes for DELAYED costs

The delayed cost includes the estimated amount for the Facility to implement an alternative form of disinfection, calculated from the first quarter of noncompliance to the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
ction/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
NE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	TOTAL	\$480
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mounted fan in these enclosures failed to work at the Meadowview Well, Alpine Well, and Lois Street Well.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to maintain the intruder resistant fences around the the Lois Street ground storage tank, the Stadium #2 ground storage tank and the River Hill elevated storage tank.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)

Description: Failure to provide a system ownership sign with an emergency telephone number in plain view of the public at the Methodist Encampment elevated ground storage tank.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(b)

Description: Failure to provide a surface water source that has a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions.

Date: 07/30/2010 (828814)

CN600522858

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)

Description: Failure to label all chemical feed lines in the surface water treatment plant.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(2)

Description: Failure to insure against cross connections at the water treatment plant.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)

Description: Failure to post an ownership sign at one of the water production facilities.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(C)

Description: Failure to provide a functional standby chlorination unit for the filtered water.

Date: 12/20/2010 (905326)

CN600522858

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2010.

Date: 12/23/2010 (906416)

CN600522858

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2010.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KERRVILLE  
RN101425296**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0825-PWS-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Kerrville ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 1000 Thompson Drive in Kerrville, Kerr County, Texas (the "Facility") that has approximately 10,505 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on February 25, 2011.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Six Hundred Ninety-Five Dollars (\$695) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid the Six Hundred Ninety-Five Dollar (\$695) administrative penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have exceeded the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") based on the running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on February 24, 2011.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Kerrville, Docket No. 2011-0825-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 365 days after the effective date of the Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
- b. Within 380 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Disinfectant By-Products Coordinator  
Water Supply Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-0387

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a


written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


9/22/11  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

8/8/11  
\_\_\_\_\_  
Date

TODD BARTON  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Kerrville

City Manager  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.